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UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL ADJUSTMENT ADMINISTRATION



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Agricultural Marketing Programs

Provisions of the Agricultural Marketing
Agreement Act of 1937



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AGRICULTURAL MARKETING PROGRAMS

Programs for the marketing of agricultural commodities backed by law which makes it possible for the programs to be applied to all handlers of the commodities concerned were first made available by the Agricultural Adjustment Act approved May 12, 1933.

The programs provided for in that act were based upon principles developed in more than two decades of effort and experience on the part of cooperative organizations of growers or of growers and handlers who had sought stabilized marketing conditions, adjustment of shipments to market demand, and better returns to growers. Programs had lacked mechanism for completely effective dealing with noncooperating handlers who, following unrelentingly the practices of individual competition, were sometimes able to defeat a program intended for the benefit of the entire industry.

MARKETING PROGRAMS UNDER THE AGRICULTURAL ADJUSTMENT ACT

This act authorized the Secretary of Agriculture to enter into agreement with processors, associations of producers, producers and others, and to issue licenses concerning the handling of agricultural commodities in the current of interstate or foreign commerce. The marketing agreement and license provisions of the original act did not state specifically the conditions under which marketing agreements and licenses could be issued, nor the terms and provisions which they could contain.

AMENDMENTS IN 1935 MADE THE LAW MORE SPECIFIC

In amendments to the Agricultural Adjustment Act adopted by Congress and approved by the President on August 24, 1935, these conditions and terms were specified. These amendments did not affect the then existing marketing agreements and licenses but provided for orders instead of licenses for the future. The amendments stated definitely under what conditions marketing agreements and others could be put into effect, and what terms and conditions orders might contain. The amendments also limited the issuance of orders to the marketing of certain agricultural products enumerated in the statute.

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MARKETING PROVISIONS SEPARATE FROM PRODUCTION CONTROL

From the time of the passage of the Agricultural Adjustment Act, the marketing programs for which it provided were regarded as mechanisms with which the Federal Government could improve the purchasing power of farmers by establishing orderly marketing through the regulation of interstate commerce, according to marketing programs planned in conference with growers and handlers. As such mechanisms the marketing provisions were regarded as separate and distinct from the production-control and processing-tax provisions of the act. Marketing programs were not designed to, and did not, control the production of any agricultural commodity.

The United States Supreme Court, in its decision in the *Hoosac Mills case*, January 6, 1936, held unconstitutional the production-control and processing-tax provisions of the Agricultural Adjustment Act. The act itself contains a "separability clause" which stipulates that the provisions of the act are separable from each other, so that if any provision were held unconstitutional or its applicability invalid, the validity and applicability of the other provisions should not be affected. Notwithstanding this clause there arose a conflict of opinion among several Federal district courts as to the separateness of the marketing provisions from the production-control provisions. In districts where lower courts had held that the marketing-agreement and order provisions of the Agricultural Adjustment Act were inseparable from the production-control and processing-tax provisions, and were therefore invalidated by the *Hoosac Mills* decision, the effectiveness of the marketing programs was suspended.

THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

In order to clarify the legal status of the marketing programs, Congress passed the Agricultural Marketing Agreement Act of 1937, which was approved by the President on June 3, 1937. It reenacts and amends the marketing-agreement and order provisions of the Agricultural Adjustment Act in separate legislation, and thus removes the technical question of separability upon which some of the adverse decisions on the marketing programs had rested.

AGRICULTURAL MARKETING PROGRAMS UNDER THE AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

The Agricultural Marketing Agreement Act of 1937 provides a plan whereby producers and handlers of certain agricultural commodities enumerated in the act may enjoy improved marketing conditions for their commodities, with consequent greater stability in market supplies and prices. The act provides for marketing programs which operate through marketing agreements or orders issued by the Secretary of Agriculture under conditions specified in the act itself.

A marketing agreement, as contemplated under the Agricultural Marketing Agreement Act of 1937, is an agreement between the Secretary of Agriculture and those handlers of the commodity con-

cerned who sign the agreement. An order as provided by the act is a regulation issued by the Secretary applicable to all handlers of the commodity in question.

A marketing agreement may be entered into with or without a contemporaneous order. The issuance of any order depends upon the determination by the Secretary that its issuance is favored or approved by a given percentage of producers, and upon the execution of a marketing agreement, providing like manner of regulation, entered into by the Secretary with handlers of a given percentage of the volume of the commodity. However, an order that has the requisite producer approval, may be issued by the Secretary with the approval of the President notwithstanding the failure of a sufficient number of handlers to sign the agreement.

PURPOSE AND POLICY

The act begins with the following declaration emphasizing its primary purpose, which is that of regulating interstate commerce in agricultural commodities:

It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure, and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce.

Following this declaration the act expresses the policy of Congress which, through powers conferred upon the Secretary of Agriculture, seeks:

(1) To establish and maintain for agricultural commodities in interstate commerce, such orderly marketing conditions as will establish prices to farmers at a level that will give such commodities a purchasing power in terms of articles farmers buy, equivalent to the purchasing power in the base period, and

(2) To protect the interest of the consumer by (a) approaching the level of parity prices by gradually correcting the current level at as rapid a rate as the Secretary of Agriculture deems feasible and in the general public interest, and (b) authorizing no action which has for its purpose the maintenance of prices to farmers above the parity level.

The "base period" for all agricultural commodities except tobacco and potatoes is specified as the pre-war period, August 1909–July 1914. The base period for tobacco and potatoes is specified as the post-war period, August 1919–July 1929.

If, for any commodity, the purchasing power during the base period cannot be satisfactorily determined from statistics available to the Department of Agriculture, then the base period for the commodity shall be the post-war period August 1919–July 1929, or that part of this period for which the purchasing power of the commodity in question can be determined from the available statistics.

Under the act, marketing agreements and orders may regulate only such handling of the commodity they cover as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity. The act expressly exempts the marketing agreement from the provisions of the antitrust laws.

DEFINITION OF INTERSTATE COMMERCE

The act contains a definition of interstate and foreign commerce which is essentially the same as that contained in the Grain Futures Act of 1922 and the Commodity Exchange Act of 1936. This definition is as follows:

"The term 'interstate or foreign commerce' means commerce between any State, Territory, or possession, or the District of Columbia, and any place outside thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory or possession, or the District of Columbia. For the purpose of this act (but in nowise limiting the foregoing definition) a marketing transaction in respect to an agricultural commodity or the product thereof shall be considered in interstate or foreign commerce if such commodity or product is part of that current of interstate or foreign commerce usual in the handling of the commodity or product whereby they, or either of them, are sent from one State to end their transit, after purchase, in another, including all cases where purchase or sale is either for shipment to another State or for the processing within the State and the shipment outside the State, of the products so processed. Agricultural commodities or products thereof normally in such current of interstate or foreign commerce shall not be considered out of such current through resort being had to any means or device intended to remove transactions in respect thereto from the provisions of this act. As used herein, the word 'State' includes territory, the District of Columbia, possession of the United States, and foreign nations."

ORDERS CAN BE ISSUED FOR SPECIFIED COMMODITIES ONLY

While the act gives the Secretary of Agriculture authority to enter into marketing agreements with the handlers of *any* agricultural commodity, he may issue *orders* applicable "only to the following agricultural commodities and the products thereof (except products of naval stores and the products of honeybees), or to any regional or market classification of any such commodity or product: Milk, fruits (including pecans and walnuts, but not including apples and not including fruits, other than olives, for canning), tobacco, vegetables (not including vegetables, other than asparagus, for canning), soybeans, honeybees, and naval stores as included in the Naval Stores Act and standards established thereunder (including refined or partially refined oleoresin)".

Orders issued by the Secretary of Agriculture are applicable to processors, associations of producers, and others engaged in the handling of agricultural commodities. These are referred to in the act as "handlers". The act specifies the provisions which orders may contain.

STEPS IN ESTABLISHING A MARKETING PROGRAM

Marketing programs are developed as nearly as possible in keeping with the essential requirements of the industry concerned. The situation of the industry and desirable provisions of a program for it, are considered by officials of the Agricultural Adjustment Adminis-

tration in conference with representatives of both the producers and the handlers of the commodity concerned. The program developed after these conferences is then discussed with the industry as a whole.

PUBLIC HEARING ON PROPOSED PROGRAM REQUIRED

Under the requirements of the act, every such program must be considered at a public hearing called by the Secretary of Agriculture. Any person having an interest in the industry may appear at the hearing to favor the proposed program, oppose it, or suggest modifications in the proposals. The hearing usually is held on both a marketing agreement and an order, but may be concerned with a marketing agreement only.

After the hearing and in the light of the testimony presented at the hearing, the proposed program may be modified. It may then be tentatively approved by the Secretary of Agriculture and submitted to the industry for final consideration.

APPROVAL OF PRODUCERS AND SIGNATURE OF HANDLERS

Before a program that includes both a marketing agreement and an order can become effective under the act, the handlers of not less than 50 percent of the volume of the commodity covered by the proposed program must sign the agreement. Special provision is made in the case of what is known as California citrus fruits, to the effect that handlers of not less than 80 percent of such commodity must sign the agreement before an order can become effective.

The Secretary of Agriculture is required to determine that the issuance of the order is approved or favored by at least two-thirds of the producers by number (three-fourths in the case of what is known as California citrus fruit) or by producers of two-thirds of the volume of the commodity covered by the order. A producer referendum may be conducted by the Secretary. In determining the approval or disapproval of the producers, the Secretary is required to consider the action of cooperative associations in this respect as the action of their affiliated producers.

HOW AN ORDER, WITHOUT AN AGREEMENT, MAY BE ISSUED

If the agreement is not signed by the handlers of the required volume of the product, an order which has been determined to have the requisite producer approval may nevertheless become effective if the Secretary, with the approval of the President, makes a determination that the failure to sign the agreement tends to prevent the effectuation of the declared policy of the act, and that the issuance of the order is the only practical means of advancing the interests of the producers in line with that policy.

The act does not prescribe the terms and conditions which may be included in marketing agreements. Consequently, when agreements are executed independently of orders, greater latitude is permitted in adapting them to the needs and customs of the industry affected, subject only to the requirement that they must tend to effectuate the declared policy of the act.

TERMS AND CONDITIONS THAT MAY BE CONTAINED IN ORDERS

Insofar as it is practicable to do so, the act specifically states what terms and provisions may lawfully be included in orders.

These terms and provisions enumerated in the act fall into three groups: (1) Provisions that may be incorporated in all orders; (2) additional provisions that may be incorporated only in orders covering the marketing of milk and its products; and (3) provisions, in addition to those authorized for all orders, which may be included only in orders governing the marketing of specified commodities other than milk and its products.

TERMS AND CONDITIONS THAT MAY BE INCORPORATED IN ALL ORDERS

All orders governing the marketing of any of the agricultural commodities specified in the act may contain one or more of the following terms:

1. Prohibiting unfair methods of competition and unfair trade practices.
2. Requiring handlers to sell the commodity or any of its grades, sizes, or qualities only at prices which they have filed in the manner provided by the order. This provision does not apply to milk and cream to be sold for consumption in fluid form.
3. Providing for the selection by the Secretary of Agriculture, or for a method for selection, of an agency or agencies having the power to: (a) administer the order in accordance with its terms and provisions; (b) make rules and regulations to make the order effective; (c) receive complaints of violations, investigate them, and report on them to the Secretary of Agriculture; and (d) recommend to the Secretary amendments to the order.
4. Provisions incidental to and not inconsistent with the specific provisions of the act, and necessary to effectuate such specific provisions.

ADDITIONAL TERMS AND CONDITIONS THAT MAY BE INCORPORATED ONLY IN ORDERS GOVERNING THE MARKETING OF MILK AND ITS PRODUCTS

In orders governing the marketing of milk and its products there must be contained one or more of specified terms and conditions in addition to those listed above. Such orders are not permitted, under the act, to include any term or condition other than those in the general list above, and one or more of the following:

1. Providing for the classification of milk according to its use by handlers; fixing or providing a method for fixing minimum prices which all handlers shall pay for milk according to its use classification; and specifying the time at which payment shall be made for milk bought from producers or associations of producers.

The act provides that such prices established for milk shall be uniform for all handlers except for adjustment which may be made on the basis of specified factors such as point of delivery, quality, and other customary market differentials.

2. Providing for payment to producers by either of two methods:

(a) Payment of a uniform price for all milk delivered by all producers and associations of producers to the same handler. This method is known as the individual-handler pool. Except in the case of orders covering milk products only, the inclusion of this provision in an order requires approval of at least three-fourths of the producers for the market, by number, or the approval of the producers of at least three-fourths of the volume of milk produced for the market during a representative period to be determined by the Secretary of Agriculture.

(b) Payment of uniform prices to all producers and associations of producers for milk delivered to all handlers, irrespective of the use made of the milk by the individual handler to whom it is delivered. This method is known as the market-wide pool.

Payments under either method are subject to adjustment upon the basis of the same factors upon which the price fixed for milk is adjusted, with a further adjustment for equally apportioning among producers and associations of producers the total value of the milk bought by any handler, or all handlers, upon the basis of the producers' marketings of milk during a representative period.

3. Prescribing a method for making adjustment in payments, as among handlers, so that the total amount paid by each handler shall equal the value of the milk bought by him at the prices fixed under the order.

4. Providing that for at least 2 months payments to a producer who did not regularly sell milk in the market during a period of 30 days before the effective date of the order, shall be made at the price for the lowest use classification of milk specified in the order, subject to the same adjustments applied to the payments to other producers.

5. Providing for rendering to producers such market services as the supplying of market information, verifying of weights, sampling, and testing of milk. For rendering these services, deductions may be made from payments to producers. Such services, however, may be rendered only to producers who are not members of a qualified cooperative association which is performing them for its members. In addition, an order may provide for the assurance of payment to producers.

No provision of an order relating to milk may prevent a milk-marketing cooperative association qualified under the Capper-Volstead Act from blending the net proceeds of collective marketing and making distribution thereof to member producers in accordance with the contract between the association and its producers.

In establishing prices which handlers are required to pay to producers the Secretary of Agriculture is required to ascertain and be guided by the price which is equivalent in purchasing power to that of the base period. If the Secretary makes a finding that these ascertained prices are not reasonable in view of the price of feeds, the available supply of feeds, and other economic conditions affecting

market supply and demand in the area concerned, he is required to fix such prices as will reflect these conditions, insure a sufficient quantity of pure and wholesome milk, and be in the public interest.

MEDIATION AND ARBITRATION PROVISIONS

The marketing agreement and order provisions of the act are supplemented by provisions authorizing under certain conditions the arbitration and mediation of disputes arising out of the marketing of milk.

Under these provisions the Secretary of Agriculture, upon the request of any cooperative association of milk producers, may mediate and, with the approval of all parties, may arbitrate disputes between the cooperative and the handlers of milk. Only those matters may be arbitrated which might be covered by milk-marketing orders issued under the provisions of the Marketing Agreement Act. The Secretary of Agriculture is required to prescribe rules and regulations for meetings held under the mediation and arbitration provisions of the act.

Any award or agreement resulting from any such arbitration or mediation must be approved by the Secretary of Agriculture or by an official of the Department of Agriculture designated by the Secretary, before it can become effective.

No award or agreement can be approved if it permits any unlawful trade practice or any unfair method of competition.

TERMS AND CONDITIONS WHICH MAY BE INCLUDED ONLY IN ORDERS GOVERNING THE MARKETING OF COMMODITIES OTHER THAN MILK AND ITS PRODUCTS

For commodities other than milk and its products enumerated in the act as those for which orders may be issued, such orders may contain one or more of specified terms and conditions in addition to those enumerated as proper for inclusion in all orders. No terms and conditions other than those included in the general group and the following may be included in orders for regulating the handling of commodities other than milk and its products.

These additional terms and conditions may provide for:

1. Limiting, or providing methods for limiting, the total quantity of the commodity or of any grade, size, or quality thereof, produced during any specified period, that may be marketed in or transported to any or all markets in the current of interstate or foreign commerce, by all handlers, during any specified period.

2. Allotting, or providing methods of allotting, the amount of the commodity or of any grade, size, or quality thereof, that each handler may buy from or handle on behalf of any and all producers during any specified period. The act requires that allotments be made under a uniform rule so that the total amount to be bought or handled during any specified period shall be apportioned equitably among producers.

3. Allotting, or providing methods of allotting, the amount of the commodity or any grade, size, or quality thereof, which each handler may market in or transport to any or all markets in the current

of interstate or foreign commerce, or directly affecting such commerce. The act requires allotments to be apportioned under a uniform rule, equitably among producers and handlers.

4. Determining, or providing for methods of determining, the existence and extent of the surplus of the commodity or of any grade, size, or quality thereof, and providing for the control and disposition of such surplus, and for equalizing the burden of such action among producers and handlers.

5. Establishing, or providing methods for establishing, reserve pools of the commodity or of any grade, size, or quality thereof, and providing for the equitable distribution of the net return from the sale thereof, among the persons interested.

MISCELLANEOUS PROVISIONS OF THE AGRICULTURAL MARKETING AGREEMENT ACT

ORDERS NOT APPLICABLE TO PRODUCERS AS PRODUCERS

No order may apply to any producer in his capacity as a producer. Orders may, however, apply to producers or associations of producers who are also handlers of the commodity they produce, but only in their capacity as handlers.

Provision is made for the regional application of orders.

ACT REQUIRES HANDLERS TO FURNISH NECESSARY INFORMATION

All parties to a marketing agreement, and all handlers subject to a marketing order, are required by the act to furnish to the Secretary of Agriculture upon his request any information determined by him to be necessary in order to ascertain how far the agreement or order has been carried out or has effectuated the declared policy of the act, or whether there has been any abuse of the exemption from the anti-trust laws.

In order to ascertain the correctness of any such report to the Secretary or to obtain information requested but not furnished in such reports, the Secretary is authorized to examine books and records. Any information furnished to or acquired by the Secretary under these provisions is, with specified exceptions, required to be kept confidential.

The act permits issuance of statements based upon information supplied by handlers, but not identifying information supplied by any individual. The Secretary of Agriculture may make public the name of any person violating any marketing agreement or order, together with the particular provisions of the marketing agreement or order that have been violated.

ENFORCEMENT OF ORDERS

Federal district courts are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any marketing agreement or order. The act also provides that the Secretary of Agriculture may investigate and report any violation of



any marketing agreement or order to the Attorney General of the United States for appropriate action. The act also provides penalties for violations of orders.

Any handler who is subject to an order is given the right, if he believes that the order or any of its provisions or any obligation imposed by it is not in accordance with law, to file a petition with the Secretary of Agriculture asking modification of the order or exemption from it, and the Secretary is required to hold a hearing upon such petition and to make a ruling thereon. The ruling is subject to judicial review.

COOPERATION WITH STATE AUTHORITIES

The act authorizes the Secretary of Agriculture to cooperate with State authorities in order to obtain uniformity in formulating, administering, and enforcing Federal and State programs for the handling of agricultural commodities. He is authorized to confer and to hold joint hearings with State authorities and, with the consent of the States, to accept and utilize the services of State officials and employees as necessary. In addition, the Secretary may avail himself of the records and facilities of State authorities, and may make available to State authorities the records and facilities of the United States Department of Agriculture.

Subject to the provisions of the act, the Secretary of Agriculture may issue orders complementary to orders or regulations for the handling of agricultural commodities, issued by State authorities.

AMENDMENTS TO ORDERS

Amendments to orders may be made through a procedure in keeping with the procedure for establishing such orders. The act provides that the Secretary of Agriculture shall hold hearings on proposed amendments, giving not less than 3 days notice of such hearings.

TERMINATION OF MARKETING AGREEMENTS AND ORDERS

Any order issued under the Marketing Agreement Act, or any provision of such an order, may be terminated or suspended by the Secretary of Agriculture whenever he finds that such order or provision obstructs or does not tend to effectuate the declared policy of the act.

Marketing agreements or orders must be terminated by the Secretary of Agriculture at the end of a current marketing period for the commodity concerned, whenever the Secretary finds that termination is favored by a majority of the producers affected by the program. Such a majority must represent more than 50 percent of the production of the commodity covered by the marketing agreement or order.